APPELLATE COURT

OF THE

STATE OF CONNECTICUT

A.C. 36724

STANDARD OIL OF CONNECTICUT, INC.

v.

ADMINISTRATOR, UNEMPLOYMENT COMPENSATION ACT

BRIEF OF THE PLAINTIFF-APPELLANT, STANDARD OIL OF CONNECTICUT, INC.

FOR THE PLAINTIFF-APPELLANT,
STANDARD OIL OF CONNECTICUT, INC.

GLENN A. DUHL
SIEGEL, O'CONNOR,
O'DONNELL & BECK, P.C.
150 TRUMBULL STREET
HARTFORD, CT 06103
TEL.: (860) 280-1215
FAX: (860) 527-5131
JURIS NO. 057730
gduhl@siegeloconnor.com

TO BE ARGUED BY:

GLENN A. DUHL

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III. Whether the trial court erred in concluding that the installers and technicians are employees subject to the Connecticut Unemployment Compensation Act, General Statutes §§ 31-222 *et seq.* [pp. 16 – 39].

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STATEMENT OF FACTS

Plaintiff-Appellant, Standard Oil of Connecticut, Inc., appeals from the trial court judgment dismissing its appeal from the decisions of the Employment Security Appeals Division Board of Review dated March 21, 2012 (R. 832–46),[1] and March 4, 2013 (A.R. 64–74),[2] denying its Motion to Correct Findings and concluding that the contractors at issue are its employees subject to the provisions of the Connecticut Unemployment Compensation Act, General Statutes § 31-222 *et seq.* (the "Act").

Plaintiff is a family-owned company providing home heating oil delivery and service and alarm system monitoring and service to customers in Connecticut. It employs more than 250 individuals who provide home heating oil delivery service and sell heating and cooling equipment to customers' homes; they provide "on call" repair and emergency service 24-hours a day, seven days a week. At issue in this appeal are contractors (the "installers/technicians"[3]) whom Plaintiff engaged to install heating oil and alarm systems and repair and service heating systems at times of peak demand.

Defendant-Appellee, Administrator of the Unemployment Compensation Act, audited Plaintiff for tax year 2007,[4] reclassified the installers/technicians as "employees" and assessed taxes and interest for 2007 and 2008. (R. 1–16, 18–21, 101–45,[5] 147.)

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[1]Record citations ("R.") reference papers returned to the court as per certifications dated May 2, 2012, filed May 7, 2012 (D.E. 100.30 [copy in Plaintiff's Appendix ("Pl.'s Appx.") at A-4]); dated August 24, 2012, filed August 27, 2012 (D.E. 105 [A-19]); and dated September 11, 2012 (D.E. 104 [A-32]).

[2]Additional record citations ("A.R.") reference papers returned to the court as per certification dated August 24, 2012, filed March 7, 2013 (D.E. 106 [Pl.'s Appx. at A-37]).

[3]A list of the installers and technicians at issue and corresponding record exhibits is included in Plaintiff's Appendix at A-425.

[4]Defendant adjusted, but did not perform an audit of, tax year 2008. (R. 16.)

[5]NB: Record pages "1" (R. 26), "2" (R. 27) and "3" (R. 28) should be appended after R.

Plaintiff, contending that it was exempt from unemployment compensation taxes on monies paid to the installers/technicians because they are *bona fide* independent contractors, appealed Defendant's assessment to the Employment Security Appeals Division Appeals Referee ("Referee"). (R. 148, 93–100.) The Referee conducted an evidentiary hearing on August 26, 2010, October 20, 2010, and October 21, 2010. (See R. 1–458 (hearing exhibits); August 26, 2010 Transcript[6] ("08/26/10 Hr'g Tr."); October 20, 2010 Transcript ("10/20/10 Hr'g Tr."); October 21, 2010 Transcript ("10/21/10 Hr'g Tr.").)

At the hearing, Plaintiff presented testimony by: Bart Liquigli; Edward Chickos, Jr.; Ramy Peress, its Chief Financial Officer; Robert Dutch; Scott Olexovitch; Ed Kochiss; Brian Borchert; Mike Porier; and David Cohen, its Vice President. By agreement, and in lieu of calling additional individuals to testify, Mr. Cohen authenticated evidence and provided testimony about the following installers/technicians: Marcel Aardewerk; Michael Bonis; David Booth; Tim Braca; Walter Camp; Ben Cerreta; Paul Delgobbo; Joe Demers; Chris Doiron; Mike Kosiorek; William Miller; Ted Nartowicz; Brian Parks; William Parks; Mike Ranilla; Gregory Ricard; Mike Savage; Gary Vannart; and Kenneth Wakeman.

For each of the installers/technicians, Plaintiff introduced evidence, including, but not limited to: trade licenses; business cards; business advertisements; business telephone listings; verifications of business incorporation; Better Business Bureau reviews; certificates of liability insurance; invoices issued to business customers; work estimates issued to business customers; identification badges; Department of Labor market information; and

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125. (See D.E. 105 [Pl.'s Appx. at A-19].)

[6]NB: Defendant's certification incorrectly identifies the date as "October 26, 2010" (see D.E. 103 [Pl.'s Appx. at A-12]); the correct date is August 26, 2010.

Contractor Agreements with Plaintiff. (See R. 288–458 (Employer's Exhibits AA–ZZ, AAA–ZZZ, AAAA–ZZZZ and AAAAA–IIII).)

Defendant presented testimony by: its auditor, Colleen Davies. It introduced: its Field Audit contact assignment, report and related correspondence; Plaintiff's yellow pages advertisement; 1099 tax forms for each of the installers/technicians; and written questionnaires completed by six of the twenty-seven installers/technicians. (See R. 1–287 (Administrator's Exhibits 1–11, A–CC).)

On August 16, 2011, the Referee issued a decision with findings of fact and affirming the Administrator. (R. 633–40 [copy in Pl.'s Appx. at A-91].) Plaintiff appealed to the Employment Security Appeals Division-Board of Review ("Board") on August 29, 2011. (R. 641–42, 647–74 [A-98, A-100].) By decision dated March 21, 2012, the Board modified the Referee's findings of fact and made additional findings. (R. 832–44 [A-126]; see also A-420.) The Board affirmed the Referee's decision as modified, concluding that Plaintiff satisfied Part C of the ABC Test, but did not satisfy Part A or Part B. (See R. 837–43.)

Plaintiff filed its petition of appeal to the Superior Court on April 19, 2012. (R. 847–48 [copy in Pl.'s Appx. at A-141].) Pursuant to Practice Book § 22-4, Plaintiff filed a timely Motion to Correct Findings with the Board on August 30, 2012. (A.R. 1–56 [A-143].) By decision dated March 4, 2013, the Board granted in part and denied in part the Motion to Correct. (A.R. 64–74 [A-202]; see also A-420.) The facts, as found by the Board on March 4, 2013, are included in Plaintiff's Appendix at A-416. The Board concluded that Plaintiff satisfied Part C, but not Parts A or B of the ABC Test.[7] (A.R. 70.)

On March 13, 2013, Plaintiff filed Claims of Error pursuant to Practice Book § 22-8

[7]Plaintiff does not appeal the Board's conclusion that it satisfied Part C (R. 841).

(D.E. 107 [Pl.'s Appx. at A-213]), and an Amended Petition of Appeal pursuant to Practice Book § 22-8(b) (D.E. 108 [A-255]). Defendant filed its motion for judgment and supporting memorandum on September 27, 2014. (D.E. 109–110 [A-260].) Plaintiff filed its memorandum of law in support of its appeal to the Superior Court on October 15, 2013. (D.E. 111–112 [A-274].)

The trial court, *Gilardi, J.T.R.*, heard oral argument on December 16, 2013. (December 16, 2013 Transcript ("12/16/13 Hr'g Tr.").) In a memorandum of decision dated March 24, 2014, the trial court dismissed Plaintiff's appeal and entered judgment for Defendant. (D.E. 114 [Pl.'s Appx. at A-375]; D.E. 119 [A-410].) Plaintiff filed the instant appeal on April 11, 2014. (D.E. 116–117; see also A-411.)

ARGUMENT

The trial court erred in dismissing Plaintiff's appeal because: (1) it erred in applying the wrong standard(s) of review where, as here, Plaintiff filed a timely Motion to Correct pursuant to Practice Book § 22-4; (2) it erred in interpreting the latter prong of Part B of the ABC Test ("places of business"), General Statutes § 31-222(a)(1)(B)(ii)(II); and (3) its conclusion that all installers and technicians are employees subject to the Act is erroneous.

I. THE TRIAL COURT ERRED IN APPLYING THE WRONG STANDARD OF REVIEW WHERE PLAINTIFF FILED A TIMELY MOTION TO CORRECT FINDINGS.

A. Legal standard.

Standard of review: "Whether the court applied the correct legal standard is a question of law subject to plenary review." *Wieselman v. Hoeniger*, 103 Conn. App. 591, 598, *cert. denied*, 284 Conn. 930 (2007).

"[T]he factual and discretionary determinations of administrative agencies are to be given considerable weight by the courts . . . however, it is for the courts, and not for

administrative agencies, to expound and apply governing principles of law." *Bridgeport Hosp. v. Comm'n on Human Rights & Opportunities*, 232 Conn. 91, 109 (1995). Connecticut courts "do not defer to the board's construction of a statute—a question of law—when, as here, the provision at issue previously has not been subjected to judicial scrutiny." *JSF Promotions, Inc. v. Adm'r*, 265 Conn. 413, 418 (2003). *See also Bridgeport Hosp.*, 232 Conn. at 110 ("deference [to an administrative decision] is unwarranted when the question is the construction of a statute on an issue that has not previously been subjected to judicial scrutiny"); *Labor & Logistics Mgmt. v. Adm'r*, 2012 Conn. Super. LEXIS 2471, at *4–6, *12–17 (Conn. Super. Ct. Oct. 3, 2012) (conducting plenary review).

Ordinarily, the Board's factual findings are not subject to further review by the court and can be modified only where the record discloses that they include facts found without evidence or fail to include material facts that are admitted or undisputed. *See JSF*, 265 Conn. at 417–18; *Kish v. Nursing & Home Care, Inc.*, 47 Conn. App. 620, 627 (1998), *aff'd*, 248 Conn. 379 (1999); *see also* Conn. Gen. Stat. § 31-249b; *Mazziotti v. Adm'r*, 2012 Conn. Super. LEXIS 293, at *6–8 (Conn. Super. Ct. Jan. 26, 2012). Here, however, Plaintiff filed a Motion to Correct Findings pursuant to Practice Book § 22-4.[8] (A.R. 1–56 [Pl.'s Appx. at A-202]); and, while it is clear that "failure to file a timely motion for correction of the board's findings in accordance with § 22-4 prevents further review of those facts found by the board"; *JSF*, 265 Conn. at 422 (citing decisions); there is no Connecticut court decision that defines the standard of review to be applied where, as here, the employer

[8]Practice Book § 22-4 provides, in relevant part: "If the appellant desires to have the finding of the board corrected, he or she must, within two weeks after the record has been filed in the superior court, unless the time is extended for cause by the board, file with the board a motion for the correction of the finding and with it such portions of the evidence as he or she deems relevant and material to the corrections asked for." Prac. Book § 22-4.

files a timely and procedurally proper motion to correct.[9] This issue of first impression, which permeates Plaintiff's appeal, is presented now to this Court for resolution.

B. The trial court erred in applying the wrong standard of review.

The trial court reached its decision to dismiss Plaintiff's appeal in error because it applied the wrong standard of review. Where, as here, Plaintiff filed a Motion to Correct Findings in accordance with Practice Book § 22-4, the court is *not* bound by and is *not* precluded from reviewing the Board's findings of fact and credibility determinations. *See JSF*, 265 Conn. at 422–23 ("failure to file a timely motion for correction of the board's findings in accordance with § 22-4 prevents further review of those facts found by the board"); *Tosado v. Adm'r*, 130 Conn. App. 266, 274 (2011) ("In the absence of a motion to correct the findings of the board, the court is not entitled to retry the facts or hear evidence. It considers no evidence other than that certified to it by the board, and then for the limited purpose of determining whether . . . there was any evidence to support in law the conclusions reached. [The court] cannot review the conclusions of the board when these depend upon the weight of the evidence and the credibility of witnesses." [internal quotation marks omitted]).

The administrative hearing precipitating Plaintiff's appeal spanned three days. Plaintiff presented evidence as to all and live testimony by seven of the installers and technicians at issue. The certified record contains over one thousand pages of evidence and more than six hundred pages of hearing transcripts. There is a substantial amount of evidence to be considered in determining whether the ABC Test is satisfied as to each

[9]In the lone other decision where a plaintiff appealing the Board's decision filed a timely motion to correct findings, *Speer v. Adm'r*, "the form of the plaintiff's motion [to correct] was not in compliance with Practice Book § 22-4." 2014 Conn. Super. LEXIS 1601, at *3 (Conn. Super. Ct. July 1, 2014).

installer and technician.

Plaintiff's Motion to Correct Findings, filed following the Board's decision of March 21, 2012, cited to undisputed record evidence supporting the requested modifications, relating to material facts in issue and, collectively, compelling a different conclusion than that reached by the Board. (See A.R. 1–56 [Pl.'s Appx. at A-143].) While the Board affirmed its decision, Plaintiff's filing the motion to correct necessarily altered the standard of review governing its appeal therefrom; in considering this appeal, the trial court was not bound by the Board's findings and credibility determinations, and was permitted to consider the record evidence. *See JSF*, 265 Conn. at 422–23; *Tosado*, 130 Conn. App. at 274.[10]

The court failed to conduct any such review. To the contrary, the court excused and accepted without question the Board's findings of material fact made without evidence and the Board's refusal to find material facts that were admitted or undisputed. For example: addressing the request to correct Finding No. 26, the court stated that it would not disturb the Board's finding, despite the fact that it is wholly unsupported by any record evidence (compare D.E. 114 at pp. 17–18 [Pl.'s Appx. at A-391–92], with D.E. 112 at pp. 29–31 [Pl.'s Appx. at A-305–307]); the court deemed it permissible that the Board refused to find that the installers and technicians were not paid an hourly wage and received no fringe benefits, despite undisputed evidence of and the parties' stipulation as to these facts (compare D.E. 114 at pp. 20–21 [Pl.'s Appx. at A-394–95], with D.E. 112 at p. 9 [Pl.'s Appx. at A-285]); and, addressing the request to correct the portion of Finding No. 6 stating that Plaintiff's business and profitability "is dependent on" work provided by the installers and technicians,

[10]Given a "failure to file a timely motion for correction of the board's findings in accordance with [Practice Book] § 22-4 prevents further review of those facts found by the board"; *e.g.*, *JSF*, 265 Conn. at 422; it follows that Plaintiff's filing a timely Motion to Correct Findings in accordance with § 22-4 in the present case would permit such review.

the court afforded blind deference to the Board stating "the board does not appear to have acted without evidence," where no evidence supporting the finding was cited by the Board and review of the record reveals that there is none (compare D.E. 114 at pp. 14–15 [Pl.'s Appx. at A-388–89], with D.E. 112 at p. 33 [Pl.'s Appx. at A-309]). The court did not perform its own analysis; it merely restated and deferred to the Board's conclusions.

Beyond this, the court recognized no distinction between the different service providers at issue (oil installers, security installers, etc.). Like the Board, the court conflated its analysis as to all the installers/technicians. (Compare D.E. 114 at pp. 22–28 [Pl.'s Appx. at A-396–402], with D.E. 112 at pp. 28–33 [Pl.'s Appx. at A-304–309].) This is improper. The facts differ as to the services provided and the work performed by each of the individual contractors. (See D.E. 112 at pp. 28–33 [Pl.'s Appx. at A-304–309].) These facts (and distinctions) are material in that they are evaluated and will affect outcomes under both Part A and Part B of the ABC Test. (See discussion in Section III, *infra*.)

It is not surprising that the trial court failed to conduct a meaningful review of the record or evaluate the Board's findings of fact, as there is not a single decision in Connecticut reviewing an appeal from the Employment Security Appeals Division following a properly filed motion to correct. The standard of review governing such circumstances must be identified and defined. Plaintiff asks this Court to do so and to conclude by the record evidence that Plaintiff has satisfied Parts A and B of the ABC Test.

II. THE TRIAL COURT ERRED IN INTERPRETING GENERAL STATUTES § 31-222(a)(1)(B)(ii).

A. Legal standard.

Standard of review: Statutory interpretation presents a question of law over which this Court exercises plenary review. *Sams v. Dep't of Envtl. Prot.*, 308 Conn. 359, 377–378

(2013); *see also JSF*, 265 Conn. at 418–19.

"The process of statutory interpretation involves the determination of the meaning of the statutory language as applied to the facts of the case." *Sams*, 308 Conn. at 377–78. "The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered. . . . When a statute is not plain and unambiguous, however, as in the present case, [Connecticut courts] look to the words of the statute itself, to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter [for interpretive guidance]." *State v. Lutters*, 270 Conn. 198, 205–206 (2004) (citation omitted; internal quotation marks omitted). *See also* Conn. Gen. Stat. § 1-2z.

"It is well settled . . . that [Connecticut courts] do not defer to the board's construction of a statute—a question of law—when, as in the present case, the [provision] at issue previously ha[s] not been subjected to judicial scrutiny or when the board's interpretation has not been time tested." *JSF*, 265 Conn. at 418. "In such a case, [the Court's] review of those provisions is plenary." *Christopher R. v. Comm'r of Mental Retardation*, 277 Conn. 594, 604 (2006) (citing *JSF*, 265 Conn. at 418); *see also, e.g.*, *Bridgeport Hosp.*, 232 Conn. at 110; *Labor & Logistics Mgmt.*, 2012 Conn. Super. LEXIS 2471, at *4–6, *12–17 (conducting plenary review).

Likewise, deference is inappropriate "when the agency's interpretation is plainly erroneous or inconsistent with the regulation," or "when there is reason to suspect that the agency's interpretation does not reflect the agency's fair and considered judgment on the matter in question. . . . This might occur when the agency's interpretation conflicts with a prior interpretation . . . or when it appears that the interpretation is nothing more than a convenient litigating position . . . or a *post hoc* rationalizatio[n] advanced by an agency seeking to defend past agency action against attack." *Christopher v. SmithKline Beecham Corp.*, 132 S. Ct. 2156, 2166–67 (U.S. 2012) (citations omitted; internal quotation marks omitted).

B. <u>The Board erred in interpreting the latter prong of Part B of the ABC Test.</u>

Here, the trial court erred in its interpretation of the ABC Test, specifically, the latter prong of Part B, "places of business," which is codified in General Statutes § 31-222(a)(1)(B)(ii)(II).

Section 31-222(A)(1)(B)(ii) provides, in relevant part: "Service performed by an individual shall be deemed to be employment subject to this chapter . . . unless and until it is shown to the satisfaction of the administrator that . . . (II) such service . . . *is performed outside of all the places of business of the enterprise for which the service is performed.*" Conn. Gen. Stat. § 31-222(a)(1)(B)(ii) (emphasis added).

The Act does not define "places of business" and there is a dearth of Connecticut case law interpreting this latter prong of Part B. As such, its interpretation presents yet another issue of first impression. "Where a statute does not define a term it is appropriate to look to the common understanding expressed in the law and in dictionaries."[11] *State v.*

[11]Black's Law Dictionary defines "place of business" as: "A location at which one carries

Vickers, 260 Conn. 219, 224 (2002). Here, "[t]he purpose of the Act is to guard against involuntary unemployment within the limitations prescribed." *Halabi v. Adm'r*, 171 Conn. 316, 322 (1976) (internal quotation marks omitted). "[A]lthough the [Act] should be construed liberally in favor of beneficiaries in order to effectuate its purpose, it should not be construed unrealistically in order to distort its purpose." *F.A.S. Int'l, Inc. v. Reilly*, 179 Conn. 507, 516 (1980). *See also Daw's Critical Care Registry, Inc. v. Dep't of Labor, Employment Sec. Div.*, 42 Conn. Supp. 376, 390 (1992) ("the exemption [set forth in the ABC Test] becomes meaningless if it does not exempt anything from the statutory provisions"), *aff'd*, 225 Conn. 99 (1993).

In such circumstances, the Connecticut Supreme Court has looked to "the case law of other states interpreting unemployment compensation statutes that impose the same three-prong test." *JSF*, 265 Conn. at 421 (citing decisions). Interpreting identical statutory language, N.J.S. § 43:21-19(i)(6), the Supreme Court of New Jersey in *Carpet Remnant Warehouse, Inc. v. Dep't of Labor* concluded that "places of business" are "locations where the enterprise has a physical plant or conducts an integral part of its business." 593 A.2d 1177, 1190 (N.J. 1991). The court held that a carpet retailer who retained individuals to install carpeting in its customers' homes satisfied Part B because the installers' services (performed at the customers' homes) were performed outside of the retailer's "places of business." Rejecting the labor commissioner's argument that "the retailer's places of business 'may broadly be said to extend to every geographical point of installation,'" the court stated: "Under that definition of 'places of business,' for a person to satisfy the B

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on a business." (9th ed. 2009). "Business" is defined as: "A commercial enterprise carried on for profit; a particular occupation or employment habitually engaged in for livelihood or gain." Black's Law Dictionary (9th ed. 2009).

standard's second alternative would be practically impossible. . . . Hence, we find that the residences of [the retailer's] customers are clearly 'outside of all the places of business of [the retailer].'" *Id. See also Sinclair Builders, Inc. v. Unemployment Ins. Comm'n*, 73 A.3d 1061, 1072–73 (Maine 2013) (declining to extend the meaning of "places of business" to include customers' residential homes); *Athol Daily News v. Bd. of Review of Div. of Employment & Training*, 786 N.E.2d 365, 372 n.11 (Mass. 2003) (declining to extend the meaning of "places of business" to include the geographic area tracked by the enterprises delivery routes or the private residences where the deliveries are made); *Comm'r of Div. of Unemployment Assistance v. Town Taxi of Cape Cod, Inc.*, 862 N.E.2d 430, 435 (Mass. App. 2007) (taxicab drivers performed their services outside of all the places of business of the enterprise; "[a]lthough the taxicabs were stored and the dispatch system was operated at the business premises of [the enterprise], the drivers did not transport customers on those premises"); *Oliveira v. ICLB, Inc.*, 2010 Mass. App. Div. LEXIS 25, at *6 (Mass. App. Div. Mar. 30, 2010) (services performed at a private residence jobsite are performed outside of all the places of business of the enterprise); *Burns v. Labor & Indus. Relations Comm'n*, 1992 Mo. App. LEXIS 556, at *9 (Mo. Ct. App. Mar. 31, 1992) (roofing contractor's only place of business was his home office, not the various jobsites at which the enterprise hired roofers to perform services); *Koza v. New Jersey Dep't of Labor*, 660 A.2d 1231, 1235 (N.J. App. Div. 1995) ("places of business" refers to the enterprise's "physical places of business, and not where th[e] service was eventually performed") (citing *Carpet Remnant Warehouse, Inc.*, 593 A.2d 1177); *ABS Grp. Servs. v. Bd. of Review, Dep't of Labor*, 2014 N.J. Super. Unpub. LEXIS 1486, at *4 (N.J. Super. Ct. App. Div. Jun. 20, 2014) (inspection services that occurred outside of all the places of business of the

enterprise satisfied prong two of Part B); *Barney v. Dep't of Employment Sec.*, 681 P.2d 1273, 1275 (Utah 1984) (declining to extend drywall contractor's "places of business" to include construction jobsites; such an interpretation ignores the enterprise's and workers' actual places of business, would declare private residences where work is performed as a place of business, and would make every subcontractor performing any service at a jobsite an employee under the statute against the legislature's intent).

In *Brenda Alward v. At Your Service*, Board Case No. 9008-BR-93 (Jun. 20, 1995), the Board concluded that the site of service does *not* become the enterprise's "place of business" where the enterprise is not "physically present" or does not "supervise and control the work performed at the site." *Id.* at p. 6 & n.3. The Board determined that an event planning company that retained bartenders, florists, caterers, photographers, etc. ("providers") to perform services at its customers' events satisfied Part B because the provider's services were performed "outside of all places of business" of the enterprise. *Id.* at p. 6. It stated: "None of the [provider's] services were performed at the [enterprise's] business premises, the office in Luzzi's [the enterprise owner's] home. The [enterprise's] party planning and coordinating generally do[es] not take place at the site of the entertainment event, and, as we noted above, the [enterprise] does not manage or control the performance of services at the site of the party. The [provider's] services were outside of all places of business of the enterprise for which the services were performed, and thus prong B is satisfied." *Id.* The Board distinguished the "authorities" relied upon by the Administrator, explaining "[t]his situation can be distinguished from those sites which become the [enterprise's] place of business, such as a construction site or a client's home,

when the [enterprise] is physically present or has the right to supervise and control the work performed at the site." *Id.* at p. 6, n.3 (emphasis added).

Defendant mischaracterized and miscited *William Greatorex v. Stone Hill Remodeling*, Board Case No. 1169-BR-88 (Jan. 9, 1989), as did the Board.[12] In *Greatorex*, the Board did *not* find that the claimant failed to satisfy Part B; rather, it concluded that the claimant did not satisfy Part A or Part C. *See* Board Case No. 1169-BR-88, at pp. 3, 4; *see also Stone Hill Remodeling v. Adm'r*, 1991 WL 32698, at *2 (Conn. Super. Ct. Feb. 21, 1991) ("The Board of Review below determined that the plaintiff failed to satisfy either parts A or C of the ABC test. (It found the facts and law sufficiently unclear that it did not reach a conclusion as to part B.)").[13]

Even assuming, *arguendo*, that the Board made a finding as to Part B in *Greatorex*—which it did not—*Greatorex* is unavailing here because its facts are not analogous to this case. The claimant in *Greatorex* "performed his services at the construction sites sourced by the [enterprise], and these job sites had *by contract* become the [enterprise's] place of business." Board Case No. 1169-BR-88, at p. 3 (emphasis added).[14] Here, there is no such contract. There is no mobile office. Moreover, the Board

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[12]The Board in this case stated: "In *Greatorex*, the board held that a home remodeling general contractor did not satisfy part B because the claimant performed his services at the construction sites secured by the general contractor, 'and these job sites had by contract become the [general contractor's] places of business.'" (R. 838 [A-132].) This is patently false. *See Greatorex*, Board Case No. 1169-BR-88; *Stone Hill Remodeling v. Adm'r*, 1991 WL 32698, at *2 ("The Board of Review below determined that the plaintiff failed to satisfy either parts A or C of the ABC test. (It found the facts and law sufficiently unclear that it did not reach a conclusion as to part B.)").

[13]It is axiomatic, then, that the Superior Court did not affirm *Greatorex* on this basis.

[14]This same material distinction is present in *Rosella Feshler v. Hartford Dialysis*, the other decision cited by the Board (R. 838 [A-132]). *See* Board Case No. 995-BR-88 (Dec. 27, 1998), at p. 5 ("[t]he services were performed on the premises of Hartford Hospital [job

itself—citing and distinguishing *Greatorex*—confirmed that the site of service does *not* become an enterprise's "place of business" where, as here, the enterprise is not "physically present" or does not "supervise and control the work performed at the site." *Alward*, Board Case No. 9008-BR-93, at p. 6, n.3.

In the present case, the trial court adopted, without analysis, Defendant's contention that Plaintiff's "places of business" should include the site of each home installation. *See Standard Oil of Connecticut v. Adm'r,* 2014 Conn. Super. LEXIS 690, at *51 (Conn. Super. Ct. Mar. 24, 2014). However, the court cannot defer to Defendant's interpretation because it confronts the court with a question of law not previously subject to judicial scrutiny. *See, e.g., Bridgeport Hosp.*, 232 Conn. at 110 (special deference to agency interpretation is "improper" in such circumstances). Further, Defendant's interpretation of this latter prong of Part B is "flatly inconsistent" with the Act; *Christopher*, 132 S. Ct. at 2169; and it conflicts with the Board's previous holding in *Alward*, Board Case No. 9008-BR-93, at p. 6, n.3. Nor can it withstand scrutiny in this case.

In *Daw's*, 42 Conn. Supp. at 400, the court rejected a similar argument advanced by the Administrator, that the "client's location becomes a place of business of the [enterprise]." The Court explained why this argument is wholly without merit:

> To say, as the [Administrator] suggests, that because Daw's [the enterprise] is in a business the nature of which cannot take place on its own premises, but only [at third party locations], and that the latter locations must necessarily be within the "enterprise" and are thus subsumed within the "place of business". . . is wide of the mark for at least two reasons. First, it misconceives what Daw's does and all it does . . . . Second, *under such reasoning there would be little, if any, need for part B to be an element of an exemption which the legislature expressly included in the statute proving that*

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site], which Hartford Dialysis [enterprise] does not own or lease but has *contractually agreed to direct and manage*" [emphasis added]).

the legislature contemplated that there are those who might demonstrate entitlement to such an exemption.

Id. at 403 (emphasis added).

"[Connecticut courts] have long held that [i]nterpreting a statute to render some of its language superfluous violates cardinal principles of statutory interpretation." *Okeke v. Comm'r of Pub. Health*, 304 Conn. 317, 328 (2012) (internal quotation marks omitted). Defendant's unreasonably broad definition of "places of business" does precisely that. *See, e.g., Carpet Remnant Warehouse, Inc.*, 593 A.2d at 1190 ("Under that definition of 'places of business,' for a person to satisfy the B standard's second alternative would be practically impossible"); *Daw's*, 42 Conn. Supp. at 403, 390 ("under such reasoning there would be little, if any, need for part B to be an element of an exemption which the legislature expressly included in the statute"; the ABC test "becomes meaningless if it does not exempt anything" from its coverage).

The interpretation of the statute advanced by Defendant and adopted by the trial court is unreasonably broad, inconsistent with the purpose of the Act, and "does not reflect the agency's fair and considered judgment on the matter in question." *Christopher*, 132 S. Ct. at 2166. Defendant's interpretation does nothing to further the Act's purpose and its practical implications are damning to Connecticut industry; it will be impossible for Plaintiff—or any Connecticut business—to ever utilize the services of an independent contractor.

III. THE TRIAL COURT ERRED IN CONCLUDING THAT THE INSTALLERS AND TECHNICIANS ARE EMPLOYEES SUBJECT TO THE ACT.

A. Legal standard.

Standard of review: As set forth in Section I, *supra*, the standard of review

applicable where the entity contesting the Administrator's assessment files a timely motion to correct findings has yet to be defined.

"In addition to defining the employer-employee relationship pursuant to the common law, [General Statutes] § 31-222(a)(1)(B) provides that individuals who perform services for others are presumed to be employees, unless the recipient of the services (enterprise) satisfies the statutory exclusion, which is popularly known as the 'ABC test.'" *Mattatuck Museum-Mattatuck Historical Soc. v. Adm'r*, 238 Conn. 273, 277–78 (1996). General Statutes § 31-222 (a)(1)(B) provides, in relevant part:

> [S]ervice performed by an individual shall be deemed to be employment subject to this chapter irrespective of whether the common law relationship of master and servant exists, unless and until it is shown to the satisfaction of the administrator that (I) such individual has been and will continue to be free from control and direction in connection with the performance of such service, both under his contract for the performance of service and in fact; and (II) such service is performed either outside the usual course of the business for which the service is performed or is performed outside of all the places of business of the enterprise for which the service is performed; and (III) such individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service performed.

Conn. Gen. Stat. § 31-222 (a)(1)(B)(ii). Parts A, B and C of the test correspond to clauses I, II and III, respectively. *E.g.*, *JSF*, 265 Conn. at 418–19. The ABC Test is conjunctive; failure to satisfy any one of the three prongs will render the enterprise subject to the Act. *Mattatuck Museum*, 238 Conn. at 277–78.

B. <u>The installers and technicians are not Plaintiff's employees.</u>

The record evidence establishes that the installers/technicians are not "employees" subject to the Act because: (A) they are not subject to direction and control by Plaintiff; (B) their services are performed outside of all of Plaintiff's places of business, and are not within the usual course of Plaintiff's business; and (C) they are engaged in independently

established businesses providing the same nature of services as those performed for Plaintiff.

1. Plaintiff satisfies Part A of the ABC Test because it presented evidence establishing that the installers and technicians are free from its direction and control.

Part A requires Plaintiff to establish that the installers/technicians have "been and will continue to be free from control and direction in connection with the performance of [their] service[s], both under [their] contract for the performance of service and in fact." Conn. Gen. Stat. § 31-222(a)(1)(B)(ii)(I). "Part A of the test invokes essentially the same criteria as the independent contractor test at common law." *F.A.S. Int'l, Inc.*, 179 Conn. at 512.

"The fundamental distinction between an employee and an independent contractor depends upon the existence or nonexistence of the right to control the means and methods of work. . . . The decisive test is who has the right to direct what shall be done and when and how it shall be done?" *Latimer v. Adm'r*, 216 Conn. 237, 248 (1990) (citations omitted; internal quotation marks omitted). "[A]n independent contractor is one who, exercising an independent employment, contracts to do a piece of work according to his own methods and without being subject to the control of his employer, except as to the result of his work." *Darling v. Burrone Bros, Inc.*, 162 Conn. 187, 195 (1972).

Here, the uncontroverted record evidence establishes that the installers/technicians retain discretion and control over the method and means of the work they performed for Plaintiff. Plaintiff does not supervise the installers/technicians while they perform their work, nor is any representative of Plaintiff present while the installers/technicians perform their work. (Finding of Fact No. 5 ("Installers are neither supervised by Standard Oil nor

does Standard [Oil] inspect their work. There is no representative of Standard Oil on the premises at anytime [sic] during the installation project while it is in progress nor upon its completion. The same is applicable to the technicians."); R. 99; R. 159 (B. Borchert Field Audit Questionnaire ("FAQ"), question 16); R. 183 (W. Camp FAQ, question 16); R. 192A[15] (B. Cerreta FAQ, question 16); R. 287[16] (E. Chickos, Jr. FAQ, question 16); R. 263 (G. Vannart FAQ, question 16); 08/25/10 Hr'g Tr.: 64–65, 71, 78–80, 86–87, 108–109; 10/20/10 Hr'g Tr.: 15, 63, 91–92, 117, 168–69, 204; 10/21/10 Hr'g Tr.: 54–55, 131–32.)

The installers/technicians have a significant investment in the tools and equipment necessary to perform their work, and they use their own tools and equipment when performing services for Plaintiff. (Finding of Fact No. 3 ("[Standard Oil] does not own or operate the tools, machinery or heavy duty vehicles required to install heating systems, tank removal or home alarm installation. As a result, it 'contracts' the work to individuals who routinely perform such work either for their own business or self employment."); Finding of Fact No. 6 ("Installers use their own equipment and tools to complete each project"); see also, e.g., 08/26/10 Hr'g Tr.: 113, 116; 10/20/10 Hr'g Tr.: 8–9, 38–39, 61, 67, 89, 109, 165, 204, 243–44; 10/21/10 Hr'g Tr.: 88; R. 160 (B. Borchert FAQ, questions 20, 22); R. 184 (W. Camp FAQ, questions 20, 22) (Camp furnishes "my own drills, snakes, meter, ladder, drill bits")); R. 193 (B. Cerreta FAQ, questions 20, 22) ("all tools are mine")); R. 201 (E. Chickos, Jr. FAQ, questions 20, 22) (Chickos furnishes "Hand tools, everything needed to do the job")); R. 244 (W. Parks FAQ, questions 20, 22); R. 264 (G. Vannart FAQ, questions 20, 22).)

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[15]NB: Record page "192A" (D.E. 104, Exh. A [Pl.'s Appx. at A-35]) should be appended after R. 192. (See D.E. 104, ¶1.b [A-35].)

[16]NB: Record page "287" should be appended after R. 200. (See D.E. 104, ¶2.b [Pl.'s Appx. at A-35].)

"Insofar as who furnishes the tools, materials or equipment to be used in the services involved, it is essential to keep in mind the rationale underlying that criterion. When it is the employer who does so the inference of right of control in the employer is a matter of common sense and business, otherwise it is not." *Daw's*, 42 Conn. Supp. at 395–96. The "significant investment in the materials or tools necessary to perform their job" by the installers and technicians, and their use of same in performing their services, weighs in favor of finding that they controlled the means and methods of their work. *Latimer*, 216 Conn. at 250; *Daw's*, 42 Conn. Supp. at 395–96.

The installers/technicians are free to accept or reject assignments offered by Plaintiff without any adverse consequences. (Findings of Fact No. 7, No. 29. See also, e.g., 08/26/10 Hr'g Tr.: 109; 10/20/10 Hr'g Tr.: 13–14, 16–17, 61–62, 90–91, 117; 146, 169, 183–84 (stipulation); see also R. 635 at ¶7 [A-92] ("Neither the installers nor the technicians submit 'bids' to perform their services and are free to decline . . . work offered by Standard [Oil] without penalty."); R. 23 ("The contractor . . . shall be free to accept or reject any job or project offered by Standard [Oil]").) Beyond this, by stipulation of the parties, the right to terminate is not a factor to be considered in the adjudication of this case.[17] (Finding of Fact No. 19. See also A.R. 1–4 [A-143–46]; A.R. 65 at ¶1 [A-203] (granting motion to correct).)

The installers/technicians are not paid an hourly wage or salary; they are paid per job. (Finding of Fact No. 15 ("The installers and technicians are paid a set rate per piece of work"); 08/26/10 Hr'g Tr.: 65, 74, 107–108, 114–15; 10/20/10 Hr'g Tr.: 14, 33–34, 75–76,

[17]The parties stipulated before the Referee that factor A-19 ("Right to Fire") was not applicable to Defendant's investigation, and that FAQ questions 26 and 27 and the answers thereto would be stricken from the record. (10/20/10 Hr'g Tr.: 140–44.) Further, the parties agreed that no installer or technician was fired or dropped from a job midstream. (10/20/10 Hr'g Tr.: 141–42.)

94, 96–97, 116, 135, 152 (stipulation), 173; 10/21/10 Hr'g Tr.: 94; see also R. 23 ("Contractor . . . is not an hourly or salaried employee of Standard [Oil]").) "[P]ayment of a worker at an hourly rate . . . is persuasive evidence that the status of the worker is that of an employee rather than that of an independent contractor." *Latimer*, 216 Conn. at 249–50. Nor do they receive fringe benefits.[18] (10/20/10 Hr'g Tr.: 182–83; 10/21/10 Hr'g Tr.: 29–30.)

The installers/technicians can realize a profit, or suffer a loss, as a result of providing services to Plaintiff. (Finding of Fact No. 25.) They are paid a set price per job regardless of the amount of time spent, the tools and equipment used, or the number of assistants used (and paid) by them in order to get the job done. (See 08/26/10 Hr'g Tr.: 65, 74, 107–108, 114–15; 10/20/10 Hr'g Tr.: 14, 33–34, 75–76, 94, 96–97, 116, 135, 173; 10/21/10 Hr'g Tr.: 94; R. 193 (B. Cerreta FAQ, questions 23, 24); R. 201 (E. Chickos, Jr. FAQ, questions 23, 24, 32); R. 244 (W. Parks FAQ, questions 24); R. 264 (G. Vannart FAQ, questions 23, 24, 32).) Plaintiff can require an installer/technician to repair defective work at their own expense and/or can hold an installer/technician liable for the cost of repairing defective work or damage. (See, e.g., Finding of Fact No. 30; 10/21/10 Hr'g Tr.: 23–24, 128; R. 456.) Defendant's auditor testified that the installers/technicians were responsible for their work and for insuring against and repairing related defects or damage. (08/26/10 Hr'g Tr.: 87.)

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[18]The Board improperly refused to find that the installers/technicians do not receive fringe benefits. (See A.R. 71 [03/04/13 Bd. Dec., p. 8], at ¶16).) The parties *stipulated* to this fact before the Appeals Referee. (10/20/10 Hr'g Tr.: 182–83; 10/21/10 Hr'g Tr.: 29–30.) The manner of payment is relevant to determination of an employer-employee relationship; *see Latimer*, 216 Conn. at 249–50; and Finding of Fact No. 15 does not speak to whether the installers/technicians receive fringe benefits. The Board's refusal to find this undisputed material fact is improper. *See, e.g., Kish*, 47 Conn. App. at 627.

Unlike employees, who are paid and can depend upon receiving an agreed-upon hourly wage, the installers/technicians assume the risk and costs associated with work performed for Plaintiff. It is within their discretion whether and how many workers to bring to a job, and how long to take to get the job done. If the work is performed at a profit, then they reap the reward. If the work is performed at a loss (i.e., takes longer than expected or a defect required later repairs), they bear that risk. Their being in a position to realize a profit or loss based upon the service provided to Plaintiff is yet another factor that supports finding that they controlled the means and methods of their work. *See, e.g., Latimer*, 216 Conn. at 237.

The lack of a right to control is supported further by the fact that Plaintiff does not monitor or inspect the contractors' work. Plaintiff does visit customers' homes to oversee or check on the installers'/technicians' work. *See Daw's*, 42 Conn. Supp. at 396; *Latimer*, 216 Conn. at 251. Nor does Plaintiff monitor their activities.[19] (Finding of Fact No. 5 ("Installers are neither supervised by Standard Oil nor does Standard [Oil] inspect their work. There is no representative of Standard Oil on the premises at anytime [sic] during the installation project while it is in progress or upon its completion. The same is applicable

[19]In this vein, the Board improperly refused to find that the installers/technicians do not maintain offices or workspace at Plaintiff's Bridgeport facility. (A.R. at ¶14). The parties stipulated that none of the installers/technicians performed services or worked at Plaintiff's facility. (10/20/10 Hr'g Tr.: 101–102, 169; 10/21/10 Hr'g Tr.: 14–15.) Plaintiff established by testimony that none of the individuals at issue maintained offices or workspace at its facility, or performed services or worked at its facility. (08/26/10 Hr'g Tr.: 117; 10/20/10 Hr'g Tr.: 7, 61, 94, 131–32, 180, 190, 204, 250; 10/21/10 Hr'g Tr.: 12, 15, 82, 84–85, 94, 101, 114, 126, 130.) Such facts are relevant and material to determining whether Plaintiff exercised direction and control over the installers/technicians. *See, e.g., AAD Vantage of S. Cent. Conn. v. Adm'r*, 1998 Conn. Super. LEXIS 2608, at *8–10 (Conn. Super. Ct. Sept. 16, 1998) (individuals at issue provided with business cards, order forms, desk space, and telephone service by the plaintiff). The Board's refusal to find this undisputed material fact is improper. *Kish*, 47 Conn. App. at 627.

to the technicians.") See also, e.g., 08/26/10 Hr'g Tr.: 64–65, 71, 78–80, 86–87, 108–109; 10/20/10 Hr'g Tr.: 15, 63, 91–92, 117, 168–69, 204; 10/21/10 Hr'g Tr.: 54–55, 131–32.)

The installers and technicians do not have set schedules or hours of work; they are free to determine which days they will perform work for Plaintiff. (See Finding of Fact No. 7; 08/26/10 Hr'g Tr.: 108–109; 10/20/10 Hr'g Tr.: 12–13, 67–68, 116–17; 10/21/10 Hr'g Tr.: 51.) The record testimony establishes that the installers/technicians inform Plaintiff of days they are available to accept work, and that any work offered to and accepted by them is scheduled within parameters given to Plaintiff by the installers/technicians.[20] (08/26/10 Hr'g Tr.: 89–90; 10/20/10 Hr'g Tr.: 120, 168; 10/21/10 Hr'g Tr.: 94, 127, 130; see also R. 192A[21] (B. Cerreta FAQ, questions 8, 10).) Likewise, it is undisputed that Plaintiff does not guarantee to any of the installers/technicians that they will receive work from it. These facts weigh in favor of finding that the installers/technicians retain control over the manner and means of their work. *See, e.g., Lick Your Chops v. Adm'r*, 26 Conn. L. Rptr. 243, 2000 Conn. Super. LEXIS 149, at *9–11 (Conn. Super. Ct. Jan. 18, 2000) (individual at issue "worked at the [enterprise's] premises during regularly scheduled hours").

Each of the installers/technicians executed a Contractor Agreement with Plaintiff. (R. 290–94, 300–304, 321–24, 340–44, 354–58, 371–75, 397–401, 416–20, 426–30;

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[20]The Board improperly refused to delete Finding of Fact No. 13, which states that the installers/technicians must perform their work within a designated time frame set by Plaintiff and the customer. (A.R. 68–69 at ¶6.) This finding is not supported by any evidence. To the contrary, the record evidence establishes that the installers/technicians may cause scheduled appointments to be rescheduled (10/20/10 Hr'g Tr.: 168), and change the time and/or order of appointments. (10/21/10 Tr.: 95–96; R. 192A [A-10] (B. Cerreta FAQ, question 10) ("I call the customer the night before or the day of and tell them when or if I'm coming").) This fact, found by the Board without evidence, must be modified or deleted. *E.g.*, Kish, 47 Conn. App. at 627.

[21]NB: Record page "192A" (D.E. 104, Exh. A [Pl.'s Appx. at A-10]) should be appended after R. 192. (See D.E. 104 at ¶1.b.)

10/20/10 Hr'g Tr.: 100–102; 10/21/10 Hr'g Tr.: 19.) It states, among other things: "It is the intent of both parties that the Contractor [the installer or technician] remain at all times an independent entity and not an employee of Standard [Oil]. The Contractor shall provide its own tools and vehicles and shall be free to accept or reject any job or project offered by Standard. *The Contractor shall at all times exercise independent judgment and control in its execution of any work, job or project it accepts.*" (R. 23 (emphasis added).) The existence of a Contractor Agreement is "entitled to some consideration on the matter of control," and weighs in favor of finding that the installers/technicians maintained control over the means and manner of their work.[22] *Daw's*, 42 Conn. Supp. at 399. Beyond this, a number of installers/technicians negotiated modifications to the contractor agreements they executed with Plaintiff, evidencing their retention and exercise of control.

Michael Poirier, an alarm installer and the owner of Sound Security Integrations, negotiated the following modifications: reduced the contractor warranty term from one year to three months (R. 342); limited warranty survival term to three months after contract termination (id.); preserved his right to terminate the contract (id.); reduced the required commercial general liability insurance from $1,000,000, to the state minimum (R. 343); and modified the nonsolicitation clause to state that "contractor will not solicit service[s] or

[22]Here, the Board's refusal to find that each of the installers/technicians executed a Contractor Agreement with Plaintiff was improper. The parties *stipulated* to this fact before the Referee. (10/21/10 Hr'g Tr.: 19.) The Board's stated reason for its refusal (that Finding of Fact No. 14 states that the installers/technicians "were required to enter into a contractual agreement" (A.R. 70 at ¶11 [A-208]), ignores a material distinction: being *required* to enter into a contractual agreement is not akin to, nor is it mutually exclusive with, actually *entering into a contractual agreement*. The Board's refusal to make the requested finding is unfair and improper; Plaintiff was entitled to have found such proven facts as it deems necessary to present to the court on appeal. *See Lanyon v. Adm'r*, 139 Conn. 20, 31 (1952); *see also*, *e.g.*, *Kish*, 47 Conn. App. at 627.

perform any services that Standard can/will or is under current contract for." (R. 343. See also 10/20/10 Hr'g Tr.: 159, 174–75.)

Marcel Aardewerk, an alarm installer and owner of Burglary Protection Systems, Inc., negotiated the following modifications: reduced the contractor warranty from one year to ninety days (R. 355); removed warranty survival after contract termination (R. 356); removed auto liability and physical damage insurance requirement (R. 357); and modified the nonsolicitation clause to state "if Standard or customer terminates the relationship and a new customer requests to be solicited for service, contractor may provide the service if requested." (R. 357. See also 10/20/10 Hr'g Tr.: 188.)

Plaintiff does not impose any uniform or signage requirements on the installers/technicians. They are not required to wear uniforms or display the Standard Oil name on their apparel or vehicles. (Finding of Fact No. 9. See also, e.g., 08/26/10 Hr'g Tr.: 114, 119, 137; 10/20/10 Hr'g Tr.: 40–41, 129, 147–48.) There is no evidence that any installers/technicians displayed the Standard Oil name on their vehicles or equipment. Even assuming, *arguendo*, that they did, there is no evidence that they were required to do so. (See 08/26/10 Hr'g Tr.: 114, 119, 137; 10/20/10 Hr'g Tr.: 40–41, 129, 147–48.) And, by contrast, it is undisputed that at least some installers/technicians displayed the names and/or logos of their own independent businesses on vehicles they used while performing services for Plaintiff. (See 08/26/10 Hr'g Tr.: 114; 10/20/10 Hr'g Tr.: 39–41.)

Further, the installers/technicians held themselves out as independent contractors. Whether an individual holds himself out as an independent contractor is a significant factor to consider in evaluating control. *E.g.*, *Lick Your Chops*, 2000 Conn. Super. LEXIS 149, at *8–9 (*citing Chute v. Mobil Shipping & Transp. Co.*, 32 Conn. App. 16, 20–21, *cert. denied*,

227 Conn. 919 (1993)). Here, there is ample evidence that the installers/technicians held themselves out to the public as independent contractors by business cards; business advertisements; business telephone listings; Better Business Bureau reviews; invoices issued to customers; work estimates issued to customers; certificates of liability insurance; and incorporation with the Secretary of State. (See R. 288–456.)

Each of the installers and technicians, individually or through their independently-owned and operated businesses, maintain, at their own expense, (1) state licenses and (2) liability insurance coverage (indemnifying Plaintiff thereunder).[23] (Finding of Fact No. 4; R. 295, 306, 306, 325, 452, 454, 455, 456; 08/26/10 Hr'g Tr.: 31, 87–88, 96; 10/20/10 Hr'g Tr.: 25, 29, 55, 87, 165; 10/21/10 Hr'g Tr.: 131.) These facts weigh in favor of finding retention of discretion and control. *See, e.g., Lick Your Chops*, 2000 Conn. Super. LEXIS 149, at *10–11 (finding lack of control where state licensed the enterprise, not the individuals at issue, and the individuals did not carry their own liability insurance).

Plaintiff does not provide the installers/technicians with an employee handbook, pay for their training, or require any training. (Finding of Fact No. 24.) These facts weigh in favor of finding that the installers/technicians maintain control over the manner and means of their work. *See Daw's*, 42 Conn. Supp. at 396 (finding further indication of lack of control where employer did not conduct orientation or prepare instruction manual for independent

[23]The Board improperly refused to find that the installers/technicians maintain liability insurance coverage at their own expense. (A.R. 71at ¶13 [A-209].) The Board's stated reason for its refusal (that Finding of Fact No. 14 states that the installers/technicians are "required" to maintain insurance coverage) ignores the material distinction between abstract written "requirements" and physical action. Moreover, the parties *stipulated* to this fact before the Referee. (10/20/10 Hr'g Tr.: 101–102; 10/21/10 Hr'g Tr.: 76, 111.) The Board's refusal to find this fact because it deemed it immaterial is unfair and improper; Plaintiff was entitled to have found such proven facts as it deemed necessary to present to this Court on appeal. *See Lanyon*, 139 Conn. at 31; *Kish*, 47 Conn. App. at 627.

contractors); *see also AAD Vantage of S. Cent. Conn. v. Adm'r*, 1998 Conn. Super. LEXIS 2608, at *10 (Conn. Super. Ct. Sept. 16, 1998).

The installers/technicians receive no instruction from Plaintiff with respect to the manner (i.e., how) or means (i.e., what tools are used) by which they perform their work. Specifically, the record evidence establishes that installers/technicians receive no instruction or direction regarding: the manner or sequence in which products are installed (08/26/10 Hr'g Tr.: 109; 10/20/10 Hr'g Tr.: 13–15, 117); where or how to insert or install a particular part (10/20/10 Hr'g Tr.: 41–42); the manner of performing their installation and/or service work (10/20/10 Hr'g Tr.: 63; 10/21/10 Hr'g Tr.: 11–12); the manner and means of performing their installation work (10/20/10 Hr'g Tr.: 170–71, 192, 204; R. 287 (E. Chickos, Jr. FAQ, question 14); or the manner and means of performing their service work. (R. 192A [A-10] (B. Cerreta FAQ, questions 14–16).)

Defendant's auditor testified that she discovered *no* instance of installers receiving instruction from Plaintiff with respect to the sequence of installation jobs or how they could do the work. (08/26/10 Hr'g Tr.: 78–79, 85, 87.) Edward Chickos, Jr., testified: "[T]hey don't tell me how—I know how to do the work. I am just contracted to a job. *They do not tell me how to do the job, no.*" (10/20/10 Hr'g Tr.: 41 (emphasis added).) Robert Dutch testified: "Oh, the manner [of] my work, I control it. . . . *They provide me only with the scope of the work. No procedures on how to do it.*" (10/20/10 Hr'g Tr.: 63 (emphasis added).) David Cohen, Plaintiff's vice president, testified further that Plaintiff does not have the right to direct how any of the installers/technicians perform their work. (10/21/10 Hr'g Tr.: 54. See also, e.g., R. 23 ("The Contractor shall at all times exercise independent judgment and control in its execution of any work, job or project it accepts"). The record

evidence establishes only that the installers/technicians are required to perform their work in accordance with applicable law and building codes. (08/26/10 Hr'g Tr.: 79, 85, 110–11; 10/20/10 Hr'g Tr.: 16, 41–42, 125–26, 171–72; 10/21/10 Hr'g Tr.: 52; R. 183 (W. Camp FAQ, question 14); R. 243 (W. Parks FAQ, question 14).)

This evidence establishes that the installers and technicians "contract[ed] to do a piece of work according to [their] own methods and without being subject to the control of [Plaintiff], except as to the result of [their] work." *See Darling*, 162 Conn. at 195 (defining "independent contractor"). Plaintiff did not have "the right to general control of the activities" performed by the installers/technicians. *See Latimer*, 216 Conn. at 248. These facts weigh heavily in favor of finding that the installers/technicians controlled the manner and means of their work.[24] *See id.*; *Daw's*, 42 Conn. Supp. at 394.

The Board's refusal to delete or modify the first sentence of Finding of Fact No. 6 ("[Plaintiff] determines the equipment to be installed for each project and requires the installer to use the parts supplied by [it]" (A.R. 66–67 at ¶4 [A-204–205])) was improper. This finding is ambiguous and prejudicial to Plaintiff, mischaracterizes record evidence, and, as stated, is incorrect. Accordingly, it should be deleted or modified. *Kish*, 47 Conn. App. at 627; *Mazziotti*, 2012 Conn. Super. LEXIS 293, at *6–9. Beyond this, the

[24]In light of the admitted and undisputed evidence, the Board's refusal to make the requested finding (see A.R. 71 at ¶17 [A-209]) was improper. *Kish*, 47 Conn. App. at 627 (facts found by the Board may be changed where "the record discloses that the finding includes facts found without evidence or fails to include material facts which are admitted or undisputed"); *Mazziotti*, 2012 Conn. Super. LEXIS 293, at *8 (corrections to the Board's findings will be made "upon the refusal to find a material fact which was an admitted or undisputed fact, upon the finding of a fact in language of doubtful meaning so that its real significance may not clearly appear, or upon the finding of a material fact without evidence"). Here, the Board ignored the facts in evidence, and instead chose to rely upon snippets it took out of context from a few written questionnaire responses that it then misconstrued in Defendant's favor.

uncontroverted record evidence establishes that Plaintiff provides installers with the *products* to be installed, using the installers' tools, miscellaneous parts and machinery. Plaintiff does *not* determine all of the "equipment" installed, nor does it supply installers with all of the "parts" required to perform the installation.

Practical examples of *products* Plaintiff provides to installers include: the *oil tank* that will be used to store heating oil in a customer's home (08/26/10 Hr'g Tr.: 104, 123); the *boiler* that will be used to heat and store hot water in a customer's home (10/21/10 Hr'g Tr.: 49–50); the *furnace* that will be used to heat a customer's home, (10/21/10 Hr'g Tr.: 58); and the *alarm system* that will be used to monitor a customer's home. (10/20/10 Hr'g Tr.: 123–26, 172–73, 195–96, 245; see also 10/21/10 Hr'g Tr.: 125–26.) Installers are not permitted to substitute these *products* (the oil tank, boiler, alarm system, etc.) for different *products* (a different oil tank, boiler or alarm system). However, installers are permitted—and are expected—to install the products using equipment, tools, materials and/or parts that are *not* predetermined, preapproved or provided by Plaintiff, but by the installers, at their own expense and discretion.

Practical examples of *equipment, materials and parts* furnished and installed by the installers include: fittings for pipe (08/26/10 Hr'g Tr.: 123); wire fittings, cement for furnaces, and insulation (10/20/10 Hr'g Tr.: 20–21); pipe, valves, and duct work (10/21/10 Hr'g Tr.: 49–51, 57–58); and other materials. (See 08/26/10 Hr'g Tr.: 131–32; 10/20/10 Hr'g Tr.: 9–10.) The undisputed record evidence establishes that installers provide and use their own tools and equipment to perform the installations. (See, e.g., Finding of Fact No. 6; 08/26/10 Hr'g Tr.: 113, 116; 10/20/10 Hr'g Tr.: 8–10, 19–20, 38–39, 61, 67, 89, 109, 165, 204, 243–44; 10/21/10 Hr'g Tr.: 70, 88, 120; R. 23 ("The Contractor shall provide its own

tools and vehicles"); R. 160 (B. Borchert FAQ, questions 20, 22); R. 184 (W. Camp FAQ, questions 20, 22); R. 193 (B. Cerreta FAQ, questions 20, 22); R. 201 (E. Chickos, Jr. FAQ, questions 20, 22); R. 244 (W. Parks FAQ, questions 20, 22); R. 264 (G. Vannart FAQ, questions 20, 22).)

With respect to Finding of Fact No. 22: The Board improperly refused to delete or modify its finding that "[Standard Oil] has instructed the security installers to run an extra wire through its keypads and to use a certain type of conductor. Moreover, the installers can only install the equipment which has been provided by [Standard Oil]." (A.R. 65 at ¶2 [A-203].) In denying Plaintiff's Motion to Correct, the Board cited the testimony of Brian Borchert, a security installer (see id.), which the Board misconstrued and improperly generalized as to *all* installers.

First, Plaintiff's home security business provides home alarm system monitoring; Plaintiff provides the product to be installed (the alarm system) to the security installers. (10/20/10 Hr'g Tr.: 123–26.) The record testimony establishes that security installers cannot substitute alarm system *components* (i.e., the control panel and system wiring), because those components are required to facilitate Plaintiff's remote access to and monitoring of the alarm system. (10/20/10 Hr'g Tr.: 172–73, 195–96, 245.) Put another way: in order for the alarm system to work, installers installing *Standard Oil's* alarm systems must install *Standard Oil's* control panels and system wiring. (See, e.g., 10/20/10 Hr'g Tr.: 123–26, 172–73, 195–96, 245.)

Second, Borchert testified that Plaintiff provided him with alarm system wiring, which he used to wire the Standard Oil control panel, and that the Standard Oil alarm system wire was distinguishable from that which Borchert used in his own business because it

contained a different number of electrical conductors.[25] (10/20/10 Hr'g Tr.:123–24.) Borchert did *not* testify that Plaintiff "instructed him to run an extra wire through its keypads and to use a certain type of conductor." (R. 835 at ¶3 [A-129].) The Board's finding mischaracterized record evidence and, as stated, is incorrect. Therefore, it should be deleted or modified. *Kish*, 47 Conn. App. at 627; *Mazziotti*, 2012 Conn. Super. LEXIS 293, at *6–9.

Plaintiff did not provide the tools that Borchert (or any of the installers) used to install its products, nor did it dictate or have any requirements regarding same. Plaintiff did not supervise the installation process. It did not inspect the alarm or heating systems after they were installed. It did not monitor any of the installers' work. Installers were free to use hired help if they desired, whatever size drill bit or piping they deemed necessary, to install the systems in whatever order and in whatever manner they pleased, and to take as many breaks as they wanted. The only requirement was the end result, being installation of a Standard Oil home alarm or heating system.

2. Plaintiff satisfies Part B of the ABC Test because it presented evidence establishing that the installers' and technicians' services are performed outside of its places of business and are outside the usual course of its business.

To satisfy Part B, Plaintiff must establish that the services at issue are performed "*either* outside the usual course of the business for which the service is performed *or* . . . outside of all the places of business of the enterprise for which the service is performed." Conn. Gen. Stat. § 31-222(a)(1)(B)(ii)(II) (emphasis added). Plaintiff presented evidence sufficient to meet both prongs, though it need satisfy only one.

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[25]Wires contain electrical conductors. A "conductor" is not a thing to be installed separate or apart from a wire.

a. The installers/technicians perform their services outside of Plaintiff's place of business.

The law and record evidence establish that the installers and technicians performed their services outside of Plaintiff's places of business. They performed all of their work outside of Plaintiff's offices (Finding of Fact No. 28), and did not maintain offices or workspace at Plaintiff's business location in Bridgeport. See n.19, *supra*. They performed their services exclusively at customers' homes. (See 08/26/10 Hr'g Tr.: 117; 10/20/10 Hr'g Tr.: 7, 61, 94, 101–102, 131–32, 169, 180, 190, 204, 250; 10/21/10 Hr'g Tr.: 12, 14–15 (stipulation), 82, 84–85, 94, 101, 114, 126, 130.) As set forth in Section II.B, *supra*, customers' homes cannot become Plaintiff's "place of business" where, as here, Plaintiff is not "physically present" and does not "supervise and control the work performed at the site." *Alward*, Board Case No. 9008-BR-93, at p. 6; *Carpet Remnant Warehouse, Inc.*, 593 A.2d at 1190. (Finding of Fact No. 5.) It is axiomatic that such services are performed outside of Plaintiff's "places of business." See Sec. II.B, *supra*.

b. Services performed by the installers/technicians are outside Plaintiff's usual course of business.

"'[U]sual course of business,' as used in § 31-222(a)(1)(B)(ii)(II), means that the enterprise performs the activity on a regular or continuous basis, without regard to the substantiality of the activity in relation to the enterprise's other business activities." *Mattatuck Museum*, 238 Conn. at 281. "'[U]sual' does not mean 'if you do it, [then] it is within your usual course of business.'. . . To define the term in such a manner would include every relationship, including *bona fide* independent contractors, within the purview of the act. . . . [I]f the activity is not performed on a regular or continuous basis, then the employer has satisfied prong B because the activity is 'outside the usual course of the

business' of the enterprise." *Id.* at 279–80. In the present case, uncontroverted record evidence establishes that services performed by the installers and technicians are outside of Plaintiff's usual course of business.

At the outset, the Board improperly conflated its analysis as to the installers and the technicians. The work performed by these individuals is separate and distinct; so, too, this Court's analysis must be separate.

i. Work performed by the installers is outside the usual course of the Plaintiff's business.

The record evidence establishes that work performed by the installers is outside the usual course of Plaintiff's business. It is undisputed that Plaintiff does not own or operate the tools, machinery or vehicles required to install home heating and alarm systems. (Finding of Fact No. 3; see also, e.g., A.R. 69 [03/04/13 Bd. Dec., p. 6], at ¶7; 10/21/10 Hr'g Tr.: 119–20.) More than 90% of Plaintiff's business involves home heating oil delivery and oil service, not installation. (Finding of Fact No. 2.) Plaintiff's employees do not perform installations. (See Finding of Fact No. 3 and *infra*, pp. 28–30.) The record evidence establishes that installations are performed exclusively by the installers, each of whom maintained an independent business providing such services, using their own equipment and personnel. (Findings of Fact Nos. 3, 4.) Plaintiff does not perform installations at all, let alone "on a regular or continuous basis"; *Mattatuck Museum*, 238 Conn. at 281. Work performed by the installers is outside of the usual course of Plaintiff's business.[26] *See id.*

[26]The Board improperly declined to delete the portion of Finding of Fact No. 26 stating: "While [Standard Oil] has no installers on payroll, it has on occasion used a company employee to install equipment when no installers were available." (A.R. 69–70 [03/04/2013 Bd. Dec., pp. 6–7], at ¶8.) The record has no evidence of Plaintiff using one of its employees to install a product (i.e., home heating/cooling system, alarm security system).

It is undisputed that Plaintiff does not own or operate the tools, machinery or heavy duty vehicles required to install home alarm security or heating/cooling systems. (Finding of Fact No. 3.) David Cohen, Plaintiff's Vice President, presented uncontroverted testimony that Plaintiff does not install home heating and cooling system products; indeed, it cannot because it does not own or operate the necessary vehicles and machinery. (Finding of Fact No. 3; 10/21/10 Hr'g Tr.: 120:4–20, 132–33.) Plaintiff made a conscious business decision to contract-out all installation work for both the heating and security systems. (See 10/21/10 Hr'g Tr.: 120–21; id. at Tr.: 120:24. See also Finding of Fact Nos. 3, 4.)

In denying Plaintiff's Motion to Correct, however, the Board identified Cohen's testimony as being the support for its conclusion that Finding of Fact No. 26 was "supported by the record." (A.R. 69–70 [03/04/13 Bd. Dec., pp. 6–7], at ¶8.) The Board's characterization of Cohen's testimony is wholly inaccurate. When pressed by the Administrator during the October 21, 2010 hearing, Cohen testified expressly that he had *no personal knowledge* of any of Plaintiff's employees ever having installed a heating or cooling system product. (Id. at Tr.: 123:20–21 ("***I do not know that we did do it.***" [emphasis added]).) No evidence was presented to show that any of Plaintiff's employees did perform any such installation.

Likewise, the record evidence establishes that Plaintiff's employees do not perform installations of home alarm security systems. (See, e.g., 10/21/10 Hr'g Tr.: 121:12–14.) Cohen testified that he had no personal knowledge of any of Plaintiff's employees ever having installed a home alarm security system. (Id. at Tr.: 122:5–11.) In its decision denying Plaintiff's Motion to Correct, the Board stated: "The appellant's vice president, David Cohen, testified that 'we do some [alarm installation]. If we do 10 percent, that's

probably a lot." (A.R. 69 [03/04/13 Bd. Dec., p. 6], at ¶8.) As cited by the Board, this excerpted quotation is grossly misleading and mischaracterizes Cohen's testimony. Read in context (see 10/21/10 Hr'g Tr.: 120–22), Cohen's testimony unambiguously states his estimation that approximately 10% of Plaintiff's business is devoted to the *monitoring and repair* of security systems in its customers' homes, *not* installation; that Plaintiff subcontracts the installation work out to the security installers (see 10/21/10 Hr'g Tr.: 120–21; id. at Tr.: 120:24 ("***We subcontract all that out***" [emphasis added])); and that Plaintiff may examine an existing security system already installed in the home of a potential customer in order to determine whether the existing system is compatible with Plaintiff's system, and may reprogram existing systems. (Id. at Tr.:121:15–23, 122:15–21.)

When asked "Do you do new installations in-house?", Cohen responded unequivocally: "***No***." (10/21/10 Hr'g Tr.: 121:12–14 [emphasis added].) When pressed, Cohen again testified that he had *no personal knowledge* of an alarm installation ever being performed by any of Plaintiff's employees:

> I don't want to - - there might be one that, for some reason, we had our guy do, because we couldn't, you know, we couldn't get a - - a sub cancelled, and we had to get it done, so we did it, so it is possible that we've done some installations. I can't say categorically we've never done one, you know, alarm installation.

(10/21/10 Hr'g Tr.: 122:5–11.) It is undisputed that Plaintiff has no installers on its employee payroll. (See, e.g., R. 16; 10/21/10 Hr'g Tr.: 132.) The record contains no evidence whatsoever to show that any of Plaintiff's employees performed an installation.

Absent *any* record evidence tending to show that any of Plaintiff's employees ever performed any installation—and there is none—the testimony of Cohen, who testified that he had no personal knowledge of this issue, is insufficient to support the Board's finding.

The Board's finding, made without evidence, is incorrect and must be deleted. *Kish*, 47 Conn. App. at 627.

ii. Work performed by the technicians is outside the usual course of Plaintiff's business.

The undisputed record evidence is that in extreme circumstances—instances of unusually high demand, unforeseen emergencies, etc., when Plaintiff has experienced overwhelming customer demand for services that must be satisfied—technicians have stepped in to fulfill the "overflow" (excess demand) that its employees cannot meet. For example: On a very cold day where more customers call Plaintiff to report that they have no heat than there are employees available to respond; or, in December, when the demand for maintenance services and heating system "tune-ups" increases dramatically, technicians are engaged to perform those services. (10/21/10 Hr'g Tr.: 84, 89–91, 122–23, 124, 147; see also 10/20/10 Hr'g Tr.: 36–37, 122–23, 124, 147.) This is a health and safety concern appropriately addressed by Plaintiff. Surely, in such dire and infrequent seasonal circumstances, Plaintiff is better to engage overflow technicians rather than permit its customers to freeze.

That technicians have on occasion performed such work does not necessitate the conclusion that all work they perform is within Plaintiff's "usual" course of business. *See Mattatuck Museum*, 238 Conn. at 279–80 ("'[Usual' does not mean 'if you do it, it is within your usual course of business.'. . . To define the term in such a manner would include every relationship, including *bona fide* independent contractors, within the purview of the act. . . . [I]f the activity is not performed on a regular or continuous basis, then the employer has satisfied prong B because the activity is 'outside the usual course of the business' of the enterprise.").

The record evidence establishes that services performed by technicians are *not* equivalent to those performed by Plaintiff's employees, nor are they mutually exclusive.[27] Record evidence establishes that Plaintiff's employees perform a host of services different, beyond and in addition to the tasks performed by technicians: home heating oil deliveries (it is significant, here, that ***ninety percent*** of Plaintiff's business is derived from its home heating oil delivery service (Finding of Fact No. 2; see also R. 634 [08/16/11 App. Ref. Dec., p. 2], at ¶2)); remaining "on call"; responding to repair requests and performing emergency services 24-hours a day, seven days a week. (See R. 281–83; 10/21/10 Hr'g Tr.: 89–90, 91–92, 154.)

In denying Plaintiff's Motion to Correct, the Board stated: "[Plaintiff] fails to state why it is relevant whether its regular employees have more duties than those assigned to the technicians." (A.R. 68 [03/04/13 Bd. Dec., p. 5].) Inasmuch as the Board deems "what shall be done" a relevant factor in its analysis (see A.R. 73 [03/04/2013 Bd. Dec., p. 10], at ¶21), consideration of services performed by Plaintiff's "staff of employees" versus the services performed by the technicians is both relevant and material. The Board's refusal to find this fact because it deemed it immaterial was unfair and improper; Plaintiff is entitled to have found such proven facts as it deems necessary to present to the court on appeal. *See Lanyon*, 139 Conn. at 31. As stated, the Board's finding is ambiguous, misleading and prejudicial to Plaintiff; as such, it must be modified or deleted. *Kish*, 47 Conn. App. at 627;

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[27]The Board improperly refused to delete the portion of Finding of Fact No. 17 that states, as to the home heating oil service contracts Plaintiff maintains with its customers: "While [Standard Oil] maintains a staff of employees to perform such services, it 'contracts' with the technicians to perform the same/similar services to its customers." (A.R. 68 [03/04/2013 Bd. Dec., p. 5), at ¶5.) This is misleading and unfairly prejudicial to Plaintiff; it misconstrues the record evidence, improperly suggesting that services performed by the technicians are functionally equivalent to the work of Plaintiff's employees.

Mazziotti, 2012 Conn. Super. LEXIS 293, at *6–9.

Finally, the Board improperly refused to delete the portion of Finding of Fact No. 16 stating that "Standard [Oil]'s business and profitability is dependent on the installation/service work provided by the installers/technicians." (A.R. 65–66 [03/04/2013 Bd. Dec., pp. 2–3), at ¶3.) The record is devoid of evidence that reasonably could be construed to support finding that any portion of Plaintiff's *business and profitability* is *dependent upon* work performed by the installers/technicians. In making such a finding, the Board acted without evidence. As such, the finding is incorrect and must be deleted or modified. *Kish*, 47 Conn. App. at 627.

3. Plaintiff satisfies Part C of the ABC Test because it presented evidence establishing that the installers and technicians are customarily engaged in independently established businesses of the same nature.

Plaintiff does not appeal from the Board's conclusion that it satisfied Part C of the ABC Test, § 31-222(a)(1)(B)(ii)(III). (See R. 841 [A-135]; A.R. 70 [A-208].)

4. Economic reality and common sense dictate that the installers/technicians are not Plaintiff's employees.

"The purpose of the Act is to guard against involuntary unemployment within the limitations prescribed." *Halabi*, 171 Conn. at 322 (internal quotation marks omitted). "[A]lthough the [Act] should be construed liberally in favor of beneficiaries in order to effectuate its purpose, it should not be construed unrealistically in order to distort its purpose." *F.A.S. Int'l, Inc.*, 179 Conn. at 516. "[T]the exemption [set forth in the ABC Test] becomes meaningless if it does not exempt anything from the statutory provisions." *Daw's*, 42 Conn. Supp. at 390.

In this day and age, people dream of running their own business. People want the freedom to set their own hours and to decide which work assignments to accept. The

installers and technicians at issue in this appeal have realized those dreams by owning and operating their own businesses. They can work and derive an income notwithstanding their relationship with Plaintiff.[28] They decide if, how often, and when to perform work for Plaintiff. They are free to accept or refuse any assignment offered by Plaintiff without recourse. They stand to make a profit, or suffer loss, as a result of the services they perform for Plaintiff. They work unsupervised by Plaintiff. They perform their services outside of Plaintiff's places of business, without any training or monitoring by Plaintiff, using their own machinery, vehicles, tools, equipment and assistants, all at their own expense. Economic reality and common sense dictate that workers with such freedoms are not employees.

CONCLUSION

For all the foregoing reasons, Plaintiff respectfully requests that the Court reverse the trial court's judgment and remand the case to the trial court with direction to render judgment sustaining Plaintiff's appeal.

[28]The policy considerations of the Act are not implicated here, where record evidence establishes that the installers/technicians face no danger of unemployment should their relationship with Plaintiff cease. The installers/technicians have their own customers, and, therefore, the ability to continue working and making an income irrespective of their relationship with Plaintiff. (See, e.g., R. 160, 193, 201, 244, 214; 08/26/10 Hr'g Tr.: 109–10, 117; 10/20/10 Hr'g Tr.: 18–19, 23, 49–50, 61, 68–70, 87–88, 111–12, 136, 167–68, 170, 192, 204, 240–42, 243, 249; 10/21/10 Hr'g Tr.: 12, 19, 76–77, 78–79, 88.) Nor is the remedial function of the Act implicated. No installer or technician has ever filed a claim for unemployment compensation benefits. Defendant did not institute the audit to recover monies paid on Plaintiff's behalf.

PLAINTIFF-APPELLANT, STANDARD OIL OF CONNECTICUT, INC.

By: _____

Glenn A. Duhl
Siegel, O'Connor,
O'Donnell & Beck, P.C.
150 Trumbull Street, 5th Floor
Hartford, CT 06103
Tel.: (860) 280-1215
Fax: (860) 527-5131
gduhl@siegeloconnor.com
Juris No. 057730

CERTIFICATION PURSUANT TO PRACTICE BOOK § 62-7

In accordance with Practice Book § 62-7, I hereby certify that the foregoing Brief of Plaintiff-Appellant conforms to the formatting requirements set forth in Practice Book § 67-2; that the font is Arial size 12; and that a copy of the foregoing Brief of Plaintiff-Appellant has been served upon the following by first class mail, postage prepaid, this 5th day of November, 2014:

Honorable Richard Gilardi, J.T.R.
Connecticut Superior Court
1061 Main Street
Bridgeport, CT 06604
Tel.: (203) 597-7250
Fax: (203) 579-6928

Thomas P. Clifford III
Assistant Attorney General
AG–Workers' Comp./Labor
P.O. Box 120
Hartford, CT 06141
Tel.: (860) 808-5050
Fax: (860) 808-5388
thomas.clifford@ct.gov

Lynne M. Knox
Chair, Employment Security Appeals Division Board of Review
38 Wolcott Hill Road
Wethersfield, CT 06109
Tel.: (860) 566-3045
Fax: (860) 263-6977
lynne.knox@ct.gov

Carl D. Guzzardi
Connecticut Labor Department, Tax Administration
200 Folly Brook Boulevard
Wethersfield, CT 06109
Tel.: (860) 263-6452
Fax: (860) 263-6567
carl.guzzardi@ct.gov

Heidi Lane
Principal Attorney
Connecticut Labor Department, Office of Program Policy
200 Folly Brook Boulevard
Wethersfield, CT 06109
Tel.: (860) 263-6765
Fax: (860) 263-6768
heidi.lane@ct.gov

Glenn A. Duhl

CERTIFICATION PURSUANT TO PRACTICE BOOK § 67-2(h)

The undersigned attorney hereby certifies, pursuant to Connecticut Rule of Appellate Procedure §67-2(h):

(1) The electronically submitted brief and appendix has been delivered electronically to the last known e-mail address of each counsel of record for whom an e-mail address has been provided; and

(2) The electronically submitted brief and appendix have been redacted or do not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order or case law.

Glenn A. Duhl

CERTIFICATION PURSUANT TO PRACTICE BOOK § 67-2(i)

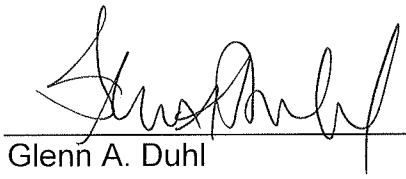
The undersigned attorney hereby certifies, pursuant to Connecticut Rule of Appellate Procedure §67-2(i):

(1) A copy of the brief and appendix has been sent to each counsel of record and to any trial judge who rendered a decision that is the subject matter of the appeal, in compliance with P.B. §62-7; and

(2) The brief and appendix being filed with the Appellate Clerk are true copies of the brief and appendix that were submitted electronically pursuant to P.B. § 67-2(g); and

(3) The brief and appendix have been redacted or do not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order or case law; and

(4) The brief complies with all provision of this rule.



Glenn A. Duhl